

## CITY OF BATTLE CREEK PO TERMS & CONDITIONS

**Packing:** All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. Purchaser is not liable for extra charges for packing, cartage, or anything else unless stated in this order.

**Inspection:** All goods and services shall be subject to inspection and approval by Purchaser at all reasonable times, including inspection and approval by Purchaser at Seller's plant does not preclude rejection for defects upon discovery by subsequent inspection. Any goods and services rejected by Purchaser shall be promptly repaired or replaced at Seller's expense. Any and all cost incurred by Purchaser in connection with the return of goods rejected by Purchaser as defective shall be at Seller's risk and expense.

**Acceptance:** Seller shall suitably pack, mark and ship in accordance with their normal procedure and the requirements of common carrier of any written instructions from Purchaser. Seller shall secure the lowest cost transportation available consistent with the service required. Delivery of any good or services shall not be deemed to be complete until actually received and accepted by Purchaser. Purchaser's count will be accepted as final and conclusive on all shipments. Items delivered in error shall be returned at Seller's expense at Purchaser's option.

**Risk of Loss:** Regardless of FOB point, Seller Agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein that occur prior to delivery; and such loss, injury or destruction shall not release Seller from any obligation hereunder.

**Warranty:** Seller warrants that it has good and merchantable title to the goods sold hereunder and that said goods shall conform to the description and applicable specifications and samples. Such goods shall be of good merchantable quality and fit for the known purpose for which sold, and are free and clear of all liens and encumbrances. Seller and Purchaser agree that this order does not exclude, or in any way limit, other warranties provided for in this agreement or by law.

**Compliance with Laws:** Seller represents and warrants that the performance of this order and the furnishing of goods called for shall be in accordance with the applicable standards, provisions and stipulations of all pertinent federal state or local laws, rules, regulations and ordinances including but not limited to the Fair Labor Standards Act, the Equal Employment Opportunity, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**Assignment:** Either this purchase order or any claim against Purchaser arising directly or indirectly out of or in connection with this purchase order shall be assignable by Seller without Purchaser's consent in writing.

**Amendments:** No change order to this purchase order shall be binding unless it is in writing.

**Waiver of Breach:** No waiver by either party of any breach of any of the covenants or conditions herein contained, performed by the other party, shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition.

**Liability and Indemnity:** Seller agrees to protect, defend, reimburse, indemnify and hold Purchaser, its affiliates and the employees and agents of Purchaser and affiliates free and harmless at all times from and against any and all claims, liabilities, expenses, losses, demands, damages, fines and causes of action of every kind and character made, incurred, sustained or initiated by any party hereto, any party acquiring any interest hereunder, any agent or employee of any party hereto, any third or other party whomsoever, or any government agency, arising out of, incident to, or in connection with this order, or in the performance, nonperformance or purported performance of the work or services or breach of the terms hereof.

**Ownership:** The seller shall assign ownership to the City for any materials developed for City use, including, but not limited to CAD, blueprints, logos, negatives, camera ready art, video, as-built drawings and designs.

**Payment:** Payment shall be made within 30 days of the submittal of a correct invoice for goods received or work performed. If applicable, expenses shall be billed at cost without markup, and must be supported by actual receipts. Mileage and per diem rates, if applicable, shall not exceed the federal rates.

**Price Warranty:** Seller will give City the benefit of any price reduction before actual time of shipment except that should City permit shipment to be made prior to specified shipping date that City shall have advantage of any price reduction before specified shipping date.

**Quantity:** The quantity of goods ordered must not be exceeded or reduced without the City's permission in writing except in conformity with acknowledged industry tolerances.

**FOB Destination:** Unless otherwise agreed to in writing, all delivered terms are to be prepaid. Acceptance of this purchase order constitutes acceptance of this term.

**Federal Excise Tax:** The City is exempt from payment of Federal Excise Tax and State Sales Tax. It must not be included on invoices.

**Anti-Discrimination Policy:** By the delivering of goods or services in response to this purchase order, the Contractor agrees that the purchase order forms a contract with the City of Battle Creek, and the Contractor is certifying compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. Contractor also acknowledges and agrees that the violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violation(s) of Chapter 214.

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